FILED
MAR 15 1965
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 913

ANTHONY ROMA individually, etc. & ano., etc., and for all others in the employ of the Transit Authority, City of New York, similarly situated,

Petitioner,

—VS.—

MUNICIPAL CIVIL SERVICE COMMISSION, CITY OF NEW YORK, TRANSIT AUTHORITY, CITY OF NEW YORK, STATE CIVIL SERVICE COMMISSION and ABRAHAM D. BEAME, Comptroller of the City of New York,

Respondents.

BRIEF OF THE RESPONDENT, NEW YORK CITY TRANSIT AUTHORITY, IN OPPOSITION TO APPLICATION FOR A WRIT OF CERTIORARI

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—vs.—

Municipal Civil Service Commission, City of New York, Transit Authority, City of New York, State Civil Service Commission and Abraham D. Beame, Comptroller of the City of New York,

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Statement

The respondent, New York City Transit Authority, operates the transit facilities owned by the City of New York. Petitioner, who is employed by the Authority as a power maintainer, a position in the competitive class of the classified civil service, seeks to have this Court review the determinations of the New York courts with respect to his proper rate of pay.

The New York State Supreme Court, New York County, and the Appellate Division of the New York State Supreme Court, First Department, have each held that petitioner does not occupy a position covered by the provisions of a New York statute (Labor Law [Cons. Laws, Chap. 31], §220), which governs the wage rates of mechanics, laborers and workmen employed on public works. The Appellate Division and the New York Court of Appeals each denied petitioner's respective motions for leave to appeal to the Court of Appeals (15 N Y 2d 482).

The New York courts, following their earlier decisions in *Matter of Corrigan* v. *Joseph,* 304 N. Y. 172 (1952) and *Matter of Foy* v. *Schechter,* 1 N Y 2d 604 (1956), held that transit employees, such as the petitioner, serving in graded positions in the classified civil service were not "mechanics, laborers and workmen" within the purview of Labor Law, §220 so as to have their wages fixed by the prevailing rate formula. In the *Corrigan* case the petitioners sought a writ of certiorari which this Court denied, *sub nom. Remelius* v. *Joseph,* 345 U. S. 924 (1953). The present petition should similarly be denied.

Argument

We urge the following objections to the jurisdiction of this Court: (1) no federal question was presented or passed upon by the New York courts and (2) no substantial federal question is involved in this case.

I.

No federal question was raised or passed upon in the state courts.

At no time, either in the pleadings, upon argument, or in the briefs submitted to the New York courts, did the petitioner contend that the fixation of his rate of wages by the governmental entity in which he is employed, deprived him of any right guaranteed by the Constitution of the United States.

The petition fails to set forth any federal question raised in the state courts nor does it indicate how it was raised, at what stage in the proceedings, and how it was passed upon. In short, the petitioner ignores Rule 23, para. 1 (f) of the Rules of this Court. He cannot do otherwise, since no federal question was ever raised in the state courts.

Indeed, had the petitioner believed that he had a federal constitutional question, he would not have twice sought leave to appeal to the Court of Appeals but would have appealed as a matter of right. Under New York practice, an appeal may be taken to the Court of Appeals as a matter of right from a final determination of the Appellate Division where a constitutional question is directly involved. (New York Civil Practice Law and Rules, §5601, subd. b; *Ellis* v. *Dixon,* 349 U. S. 458 [1955], rehearing denied 350 U. S. 855.)

The petitioner in his statement of the case (pp. 4-5) has considerably departed from and enlarged the record which was before the state courts, in describing his title, his duties and in citing rates of pay allegedly paid others for similar duties. It is fundamental that this Court will not review

the determinations of state courts on matters which, not being part of the record before the state courts, could not have been considered by those courts. *Rodriguez* v. *Vivoni*, 201 U. S. 371, 377 (1906); *Edward Hines Trustees* v. *Martin*, 268 U. S. 458, 465 (1925).

It is equally well settled that a petitioner is not entitled to raise in this Court claimed violations of constitutionally guaranteed rights not presented to the state courts. *Dewey* v. *Des Moines*, 173 U. S. 193 (1899); *Beck* v. *Washington*, 369 U. S. 541, 558 (1962) quoting from *United States ex rel. Darcy* v. *Handy*, 351 U. S. 454, 462 (1956).

II.

No substantial federal question is presented in this case.

For the first time in this litigation petitioner now asserts that he has been denied "due process" and has been "deprived of a constitutionally protected property right". Presumably these claims are based on the Fourteenth Amendment to the United States Constitution although the petition does not set forth any constitutional provision other than a portion of Article I of the New York State Constitution (pp. 4 and 19).

Petitioner urges (Petition, p. 2) that he was denied due process by being deprived of his "vested right" to be paid wages, as prescribed by a New York statute, Labor Law §220, when his position was graded in the classified civil service. This was the very argument made and rejected in the *Corrigan* case, *supra*. The state courts held in that case, and have repeated here, that by reason of an employee's status in the graded civil service, with its concomitant benefits, his position is not within the purview of

Labor Law §220. Thus, petitioner has no "vested right" to any rate of pay except that fixed by his public employer, after bargaining negotiations with the recognized union which represents employees in his category.

Petitioner also claims (Petition, pp. 2-3) to have been deprived of a constitutionally protected property right by reason of his transfer from the employ of a city agency to the employ of the New York City Transit Authority. Such transfers were made necessary in 1953 by the abolition of the agency of the City of New York (Board of Transportation), which had formerly operated the transit facilities, and the creation by the New York legislature of the governmental agency known as the New York City Transit Authority which took over the operation of the city-owned transit facilities and has operated them since that time. (Public Authorities Law, Article 5, Title 9, §§1200-1221 [Cons. Laws, chap. 43-A].) As authorized by the statute, all Board employees were transferred to the new Authority, retaining their former civil service status and retirement system membership. They continued to perform their former duties on a transit system. The state courts, in the *Foy* case, *supra,* which arose after the creation of the Transit Authority, and in the instant case, have found that there was no change in the petitioner's status because of this statutory transfer which would alter the application to him of the *Corrigan* decision.

The assertion (Petition, p. 3) that two governmental agencies, the City of New York and the Transit Authority, are acting in collusion to deprive the petitioner of his salary rights is nowhere supported in the record of this case and is, of course, untrue.

There is no federal question whatever involved in this case. The sole claim of the petitioner is that his wages

have been improperly fixed by the local government agency for which he works. That argument was rejected by the New York courts in the *Corrigan* and *Foy* cases, *supra*, and again in the instant case. In reaching these conclusions, the state courts have interpreted the Constitution of the State of New York and the state's Labor Law. Clearly the rates of wages to be paid employees by local governments are, and should remain, like other matters of local concern, wholly within the jurisdiction of the State, the state courts and local officials. *Dodge* v. *Board of Education*, 302 U. S. 74, 78-79 (1937); *Shoener* v. *Pennsylvania*, 207 U. S. 188, 195 (1907); *American Railway Express Co.* v. *Kentucky*, 273 U. S. 269, 272 (1927).

CONCLUSION

The petition for a writ of certiorari should be denied.

March 12, 1965

Respectfully submitted,

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